IN THE HIGH COURT OF DELHI

Crl.M.C.No.3012-17/2005

Shri Girish Bhalla & Ors. ..... Petitioner
! through: Mr.Pawan Kumar, Adv.

VERSUS

$ Rajesh Arora ..... Respondents
^ through: None.

% DATE OF DECISION: 1.11.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.**(Oral)
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1. Petitioners are aggrieved by the order dated 19.1.2005 summoning them to face trial for the offences under Sections 420/467/468/120-B IPC.

2. The order reads as under :-

> "Present: Shri Rajesh Tyagi, advocate for the complainant Madan Mohan
>
> At his request complainant is exempted for today.
>
> Arguments heard at length.

> Pre-summoning evidence perused. In my considered view, offence is made out u/s 420/467 & 468 I.P.C. r/w 120B I.P.C. Against all the accused persons.
>
> All accused be accordingly summoned on filing of P.F. and Dasti for 21.05.05.
>
> Learned Counsel states that accused no.3, S.S. Bhalla has already died and wishes to withdraw the complaint against him. The remaining accused persons be summoned.

3. It is urged by learned counsel for the petitioners that howsoever brief the reasons may be, the order summoning a person to face trial for a criminal offence must reflect that the learned Magistrate has applied his mind to the facts of the case and has applied the law thereto; that the learned Magistrate has examined the nature of the allegations and evidence, both oral and documentary, in support thereof and prima facie recorded sufficiency thereof to opine that an offence has been made out.

4. Learned counsel for the petitioners relies upon a decision of the Supreme Court reported as AIR 1998 SC 128 *Pepsi Foods Ltd. Vs. Special Judicial Magistrate & Ors.*

5. In dictionary the word 'cognizance' is defined as under :-

> 'knowledge or awareness; the action of taking judicial notice; a distinctive devise or mark, especially as formerly worn by retainers of a noble house.'

6. Cognizance is co-existant when a person is in a state of cognition.

7. In the dictionary 'cognition' is defined as under :-

> 'The mental action or process of acquiring knowledge through thought, experience and the senses ; perception, sensation or intuition resulting from this.'

8. A summoning order is the order by which a learned Magistrate evidences his act of taking cognizance of a complaint. Thus, it must reveal that the learned Magistrate was in a state of cognition.

9. The reasons which have led the learned Magistrate to hold that prima facie offence is made out has therefore to be discernible from the order. If not discernible from the order, it would be left to guesswork as to on what basis learned Magistrate directed summoning of the accused persons.

10. What are reasons?

11. The mental process which culminates in the decision is reasoning.

12. Howsoever brief reasons may be, they must reflect a cognitive mind, i.e. a mind which has come to grips with the factual matrix and has considered the law applicable thereto; from the twin resulting the decision.

13. The impugned order is bereft of all afore-noted features.

14. In para 27 of the decision in *Pepsi Foods Ltd's* case it was noted as under :-

> "27. Summoning of an accused in criminal cases is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinse the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence if prima facie committed by all or any of the accused."

15. Factual backdrop of the instant case is that the complainant had entered into 2 agreements with petitioners 5 and 6. He alleged that petitioners 1 and 3 who are chartered accountants were giving him professional advise and had in fact induced him to enter into the agreements with petitioners 5 and 6. Petitioners 2 and 4 are the wives of petitioners 1 and 3

respectively. Complainant alleged that they were conspirators.

16. In respect of the agreements, civil proceedings by way of Suit No.501/2002 were already pending in this court on the original side when the complaint in question was filed.

17. What was required to be considered by the learned Magistrate was, whether the transactions in question were purely civil in nature. What was further required to be considered by the learned Metropolitan Magistrate was whether there was any material to hold that petitioners 1 and 3 as professional chartered accountants had conspired with petitioners 5 and 6. What was required to be further considered by the Magistrate was whether petitioner No.2 who is a housewife had any role in the formulation of the agreement between the parties. What was further required to be considered by the learned Magistrate was whether there was any material wherefrom conspiracy could be inferred.

18. Suffice would it be to state that where a civil transaction takes colour of criminal litigation, the summoning order must bring out, howsoever briefly it may be so, the contours of the criminality involved.

19. I thus dispose of the petition quashing the order dated 19.1.2005 summoning petitioners as accused persons.

20. Further, I clarify that it would be open to the learned Metropolitan Magistrate to revisit the evidence and after recording reasons, howsoever brief they may be, if case is made out to summon any person accused in the complaint for an offence to pass appropriate orders.

21. No costs.

November 01, 2007 **PRADEEP NANDRAJOG, J.**
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